STATE OF MICHIGAN

COURT OF APPEALS

TEAMSTERS LOCAL 580, Plaintiff-Appellee,	UNPUBLISHED August 21, 2014
v	No. 314770 Ingham Circuit Court
CITY OF LANSING, Defendant-Appellant.	LC No. 12-000639-CL

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order denying defendant summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction). For the reasons set forth in this opinion, we vacate the trial court's order and remand this matter to the trial court for entry of summary disposition against plaintiff pursuant to MCR 2.116(C)(4).

Plaintiff is a labor organization that serves as the exclusive bargaining representative for two bargaining units of defendant's employees: the Clerical, Technical, and Professional bargaining unit and the Supervisory bargaining unit. Defendant and plaintiff were parties to collective bargaining agreements (CBAs) that expired on January 31, 2007. On January 10, 2010, they signed tentative successive agreements, each of which included the same "me-too" clause. As it appears on the tentative agreements, the "me too" clause reads as follows: "Me Too clause for any lower health care premium share contribution and/or economic increases negotiated with the UAW Local 2256 City employees using base costs." (Underscoring in original.)

Shortly after the tentative agreements were ratified by defendant and plaintiff's constituent bargaining units, but prior to the execution of the written CBAs, a dispute arose regarding whether the "me too" clause would be incorporated into the final CBAs, with plaintiff insisting that it should be, and defendant insisting that it should not. The January 2010 agreement was set to expire on January 31, 2012, but was extended until January 31, 2013 without resolution of the dispute.

Plaintiff filed a complaint in circuit court questioning the validity of the January 2010 agreement and asking the trial court to determine whether the parties had an agreement. Plaintiff asked the trial court to determine which if any valid agreements had been formed between the two parties since 2006, and to identify the rights and obligations resulting from the parties'

attempts to form successive CBAs, specifically from their ratification of the January 2010 tentative agreement and the further extension of that agreement through January 2013. Plaintiff also asked the court to declare that the "me-too" clause is a part of the successive CBAs that should have resulted from the January 2010 agreements.

Defendant filed a motion for summary disposition under MCR 2.116(C)(4), arguing that plaintiff's claims, if true, constituted an unfair labor practice charge in violation of the Public Employee Relations Act (PERA), MCL 423.201 *et seq*., and that the Michigan Employment Relations Commission (MERC) exercised exclusive jurisdiction over PERA violations. Defendant argued that plaintiff cannot avoid MERC's jurisdiction merely by titling its claim a breach of contract action or seeking declaratory relief. Regardless of how plaintiff characterizes the dispute, defendant argued, it is nothing more than an unfair labor practice charge under PERA. The trial court denied defendant's motion, stating on the record that the real issue was whether a tentative agreement had ever been reached and finding it necessary to conduct an evidentiary hearing to determine whether a meeting of the minds had occurred with regard to the January 2010 agreement and its successive extensions. Such a ruling was clearly contrary to long standing legal precedent.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002). A motion brought under MCR 2.116(C)(4) is reviewed to determine "whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000). When a court lacks jurisdiction over a subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998).

It is well settled in our State's jurisprudence that PERA governs public sector labor law. *Kent Co Deputy Sheriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 313; 605 NW2d 363 (1999). It is also well settled that the MERC is vested with exclusive jurisdiction to consider allegations of unfair labor practices and misconduct under PERA. *Id*. See also, *Rockwell v Crestwood School Dist Bd of Ed*, 393 Mich 616, 630; 227 NW2d 736 (1975). In general, before a labor union may sue an employer in circuit court, it must exhaust its administrative remedies for unfair labor practices that are properly submitted to the MERC. *Id*.

It is an unfair labor practice for a public employer to refuse to bargain collectively with the representatives of its public employees. MCL 423.210(1)(e). To bargain collectively means:

> [T]o perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, *and to execute a written contract*, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession. [MCL 423.215(1).] (emphasis added).

MCL 423.210 provides that a refusal to bargain collectively with representatives of public employees is an unfair labor practice.

Plaintiff's claim is that the parties reached an agreement as to the inclusion of a me-too clause in the successor agreement, which was ratified by both sides, but defendant would not allow the provision to be included in a final written agreement. The statutory definition of collective bargaining includes the execution of a written contract. The failure to execute a written contract after reaching a valid and binding agreement is an unfair labor practice. *Michigan Council No 55, AFSCME, AFL-CIO,* 62 Mich App 157, 159-160; 233 NW2d 511 (1975).

Plaintiff's claim is identical to the claim raised in *Michigan Council.* It is claiming that a valid and binding agreement was reached, and that defendant refused to execute the agreement. *Michigan Council* affirmed the MERC finding that this action was an unfair labor practice under MCL 423.210. Since this Court's opinion in *Michigan Council*, we note no changes in the statutory framework which provided the basis for our opinion. Further, there has been no legislative action which would cause us to reconsider our prior opinion. Therefore, we adopt our prior holding in *Michigan Council* as applied to this matter. We note by so doing that even if plaintiff's claim is characterized as a breach of contract, it was required to exhaust its administrative remedies through MERC before it could file an action in circuit court. *Rockwell, supra.*[1] We therefore find that the trial court clearly erred in not granting defendant's motion for summary disposition.

We hold that a claim by a charging party that respondent failed to execute a written agreement after a tentative agreement is ratified is an unfair labor practice and therefore within the exclusive jurisdiction of the MERC. We therefore vacate the order denying summary disposition to defendant and remand to the trial court for the sole purpose of entering an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(4).

Order vacated and matter remanded to the trial court for entry of summary disposition in favor of defendant pursuant to MCR 2.116(C)(4). Defendant, being the prevailing party, may tax costs. MCR 7.219(A). We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Stephen L. Borrello

[1] We note from plaintiff's brief that there is currently a MERC proceeding between these two parties. Despite inquiries from this Court to the MERC and a specific request from plaintiff's counsel at oral argument for documents relating to this alleged MERC proceeding, we are still without any information relative to the basis or nature of that MERC proceeding.